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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

T.S., Petitioner, v. THE SUPERIOR COURT OF CONTRA COSTA COUNTY, Respondent; CONTRA COSTA COUNTY BUREAU OF CHILDREN AND FAMILY SERVICES et al., Real Parties in Interest.	A148941 (Contra Costa County Super. Ct. No. J16-00377)

Petitioner T.S. (mother) petitions this court for extraordinary writ review of a juvenile court order setting a selection-and-implementation hearing under Welfare and Institutions Code[1] section 366.26 for her daughter, six-month-old K.P. Mother argues that there was insufficient evidence to bypass family reunification services under section 361.5, subdivision (b)(10) (section 361.5(b)(10)), which applies when a parent's reunification services for a child's sibling or half sibling have been terminated and the parent has not made a reasonable effort to treat the problems that led to the sibling's or half sibling's removal.[2] She also claims that the court erred by determining that services

[1] All further statutory references are to the Welfare and Institutions Code.

[2] The Contra Costa County Bureau of Children and Family Services (Bureau) recommended that mother receive reunification services, and it takes no position on the

were not in K.P.'s best interest and reducing visitation. We disagree with these contentions and deny the petition.

I.
FACTUAL AND PROCEDURAL BACKGROUND

K.P. was born in March of this year and came to the Bureau's attention after she tested positive for THC at birth. Mother had unmet mental-health needs and "a history of substance abuse and homelessness," and she did not have anywhere to live with the baby upon discharge from the hospital. The Bureau was also aware of dependency cases involving mother's two other children: K.P.'s half brother K.D., now two years old, and K.P.'s half sister K.W., now one year old (collectively, the half siblings).[3]

In April, the Bureau filed a petition alleging that the juvenile court had jurisdiction over K.P. under section 300, subdivisions (b)(1) and (j) because mother had unmet mental-health needs and a substance-abuse problem impairing her ability to care for the baby and had failed to participate in her case plan in the half siblings' cases. The detention/jurisdiction report indicated that mother had been diagnosed with schizophrenia and had been "hospitalized multiple times due to mental[-]health[-]related concerns" but was not taking medication or receiving any mental-health treatment. She was working with a caseworker to find housing, but her plan to live with a friend had fallen through after the friend's children were removed from the friend's care.

The juvenile court ordered K.P. detained, and she was placed in the same foster home as the half siblings. The court also ordered mother to have a minimum of two supervised visits per month with K.P. and to participate in alcohol and drug testing and parenting education. A contested jurisdiction hearing was held in May, and the court sustained the petition's allegations. Mother did not appear at this hearing, reportedly because she was in the emergency room.

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merits of her petition. K.P., the party that moved to bypass services, filed a response to the petition after we ordered counsel appointed for her.

[3] The juvenile court took judicial notice of the records in the half siblings' cases.

The June disposition report indicated that mother was still working with her caseworker, who had accompanied her to an appointment with a psychiatrist in May. Mother reported, and the caseworker confirmed, that the psychiatrist said mother did not currently need medication. Mother agreed to take medication if it was ever deemed necessary. She had also enrolled in community college, had had a few job interviews at restaurants, and had tried to enroll in two different parenting classes but was unable to do so because both were full. She indicated that although she had not drug tested for the Bureau, she had not used marijuana since shortly after K.P.'s birth. Mother had engaged in supervised visits with K.P. and the half siblings, at which mother was "always . . . loving and appropriate with all the children."

The disposition report also provided more details about the half siblings' cases. The half siblings were removed in July 2015 after mother sought medical care for then two-month-old K.W., who had a respiratory infection, and it was reported that mother had nowhere to live. Medical staff expressed concern because K.W.'s condition would require careful monitoring and mother had not followed through on numerous previous housing referrals. In addition, although mother indicated that then one-year-old K.D. was staying with a friend, she was "unable to provide [K.D.'s] exact location."

The dependency petition filed for K.W. alleged that the juvenile court had jurisdiction under section 300, subdivision (b) because mother was "unable to provide adequate shelter and provisions" based on her homelessness, had "failed to provide adequate medical care," and "ha[d] mental[-]health concerns that impair[ed] her ability to provide regular care." The dependency petition filed for K.D. alleged that the court had jurisdiction under section 300, subdivision (b) because mother was "unable to provide adequate shelter and provisions" based on her lack of awareness of K.D.'s whereabouts and "ha[d] mental[-]health concerns that impair[ed] her ability to provide regular care" and under subdivision (j) based on the neglect of K.W.'s medical needs. The court found all these allegations true in September 2015, and mother's reunification services were terminated in early May 2016. A section 366.26 hearing for the half siblings was

scheduled for September 2016, the month before this opinion was filed, and we are not aware of its outcome.

According to the disposition report in this case, mother acknowledged that she had resisted participation in reunification services in the half siblings' cases because she was upset that the half siblings had been removed and was primarily focused on obtaining housing. She maintained, however, that she was committed to participating in services in this case. The Bureau "acknowledge[d] practical hesitation in offering" services to mother, given her failure to participate in services in the half siblings' cases. It nevertheless recommended that she receive services, taking the position that section 361.5(b)(10) did not apply because she "had made [an] effort to treat the problems that led to the removal of [the half] siblings" after her services for them were terminated.

A contested disposition hearing was held in July of this year because K.P.'s trial counsel, relying on section 361.5(b)(10), opposed reunification services for mother. Mother was not present at the hearing because she "got on the wrong bus" and was unable to arrive in time, and she did not present any evidence. A social worker testified that although mother "had not engaged in any aspects of her case plan" in the half siblings' cases except visitation, mother was making several efforts to treat the problems that had led to the half siblings' removal. These efforts included attending psychiatric appointments and individual therapy, looking for housing, pursuing job interviews, and "[j]ust trying to stabilize her life in general." Beginning in May, mother had attended monthly appointments with a psychiatrist. In addition, mother's caseworker was providing mother with individual therapy, although it was unclear when that had started. Mother had also visited K.P. "[a]t least six or seven times" since the baby's removal. The social worker acknowledged, however, that mother had missed a few other visits, still had not enrolled in a parenting class, and had not done any drug testing to date, in either K.P.'s case or the half siblings' cases.

The juvenile court continued the disposition hearing to later in July to allow mother to be present before it announced its ruling. Mother appeared for the continued hearing and tested positive for THC after the court ordered that she be drug tested before

the case was called. After hearing argument, the court ruled that section 361.5(b)(10) applied. The court determined that mother's "engagement with [the caseworker] and two psychiatric appointments really do not show . . . a reasonable effort. [¶] Mother continues to use substances. She does not test. And when you have somebody with an extensive mental[-]health history . . . engaging in the use of illicit substances . . ., that's not [a] reasonable effort to treat the problem that led to the removal of the . . . half sibling[s]." The court also found that reunification services were not in K.P.'s best interest. It set a section 366.26 hearing for November 2 and ordered that mother's visitation be reduced to one supervised visit per month.

II.
DISCUSSION

Mother's primary claim is that there was insufficient evidence supporting the bypass of her reunification services for K.P. We are not persuaded.

Ordinarily, reunification services must be provided whenever a child is removed from a parent's custody. (§ 361.5, subd. (a).) "Reunification services need not be provided," however, "when the [juvenile] court finds, by clear and convincing evidence," that any one of a number of statutory bypass provisions applies. (§ 361.5, subd. (b).) "[T]he party seeking bypass of reunification services under section 361.5, subdivision (b) has the burden of proving that reunification services need not be provided." (*In re Angelique C.* (2003) 113 Cal.App.4th 509, 521.)

One such statutory bypass provision applies if (1) the juvenile court has ordered termination of reunification services for the child's sibling or half sibling based on the parent's failure to reunify after the sibling's or half sibling's removal and (2) the parent "has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling or half sibling." (§ 361.5(b)(10).) "This particular bypass provision recognizes the problem of recidivism on the part of a parent who has been afforded 'at least one chance to reunify with a different child through the aid of governmental resources and fail[ed] to do so' because 'when another child of that same parent is adjudged a dependent child, it is not unreasonable to assume reunification efforts will be

unsuccessful.' " (*Melissa R. v. Superior Court* (2012) 207 Cal.App.4th 816, 821.) If the provision applies, the court cannot order services unless it finds by clear and convincing evidence "that reunification is in the best interest of the child." (§ 361.5, subd. (c).)

We review an order denying reunification services for substantial evidence. (*D.F. v. Superior Court* (2015) 242 Cal.App.4th 664, 669.) In doing so, we view the evidence in the light most favorable to K.P., the prevailing party below, and "indulge all legitimate and reasonable inferences to uphold the [juvenile] court's order." (*Patricia W. v. Superior Court* (2016) 244 Cal.App.4th 397, 419.)

Here, there is no dispute that mother's reunification services for the half siblings were previously terminated after the children were removed from her care and mother failed to reunify with them. Rather, the only issue is "[t]he reasonable[-]effort requirement[, which] focuses on the extent of a parent's efforts, not whether he or she has attained 'a certain level of progress.' " (*R.T. v. Superior Court* (2012) 202 Cal.App.4th 908, 914 (*R.T.*).) This requirement "provides a means of mitigating an otherwise harsh rule that would allow the [juvenile] court to deny services simply on a finding that services had been terminated as to an earlier child when the parent had in fact, in the meantime, worked toward correcting the underlying problems. . . . 'If the evidence suggests that despite a parent's substantial history of misconduct with prior children, there is a reasonable basis to conclude that the relationship with the current child could be saved, the courts should always attempt to do so. Courts must keep in mind that "[f]amily preservation, with the attendant reunification plan and reunification services, is the first priority when child dependency proceedings are commenced." [Citation.] The failure of a parent to reunify with a prior child should never cause the court to reflexively deny that parent a meaningful chance to do so in a later case.' " (*In re Harmony B.* (2005) 125 Cal.App.4th 831, 842.)

We begin by considering which problems led to the half-siblings' removal and which of mother's efforts are therefore relevant. Mother takes the position that "[t]he central issue in both the [half] siblings' case[s] and the current case is [her] mental health." Similarly, the Bureau took the position below that mother's mental-health issues

prompted the half siblings' removal, and it recommended that mother receive reunification services because it considered her participation in psychiatric appointments and individual therapy to be a reasonable effort to address those issues. K.P. takes a broader view, however, suggesting that mother was required to make efforts to address not only her mental-health issues but "her history of neglect of her children, her inability to parent, her substance abuse, [and her] homelessness."

"[T]he reasonable-efforts-to-treat prong of section 361.5, subdivision (b)(10) . . . is directed not to *all* the issues that confronted a parent in a prior dependency proceeding but specifically to 'the problems that led to the removal of the sibling [or half sibling].' " (*In re Albert T.* (2006) 144 Cal.App.4th 207, 220, italics in original.) Based on the jurisdictional allegations sustained in the other cases, the problems that led to the half siblings' removal were mother's mental-health issues, homelessness, and failure to ensure adequate medical care for K.W. Notably, mother's marijuana use was not mentioned in any of those allegations, and there is no other indication that it was a factor prompting the half siblings' removal. Indeed, the Bureau received a referral in April 2015 after K.W. tested positive for THC at birth, at which time mother admitted to using marijuana throughout her pregnancy, but the Bureau closed the referral and the half siblings were not removed until two months later. Nor will we consider the other shortcomings of mother's that K.P. identifies, including mother's failure to enroll in a parenting class, missed visits, and missed court hearings. Of the issues that actually led to the half siblings' removal, mother's ability to ensure adequate medical care was apparently no longer an issue by the time K.P. was removed, and we therefore confine our analysis to whether there was substantial evidence that mother did not make a reasonable effort to address her mental-health issues or homelessness.

Next, we consider the appropriate time period over which mother's efforts should be judged. There is a split in authority involving whether the relevant period begins when reunification services are terminated in a sibling's or half sibling's case (see *In re Harmony B.*, *supra*, 125 Cal.App.4th at pp. 842-843) or when the sibling or half sibling was removed, at least "when [the] case involves the almost simultaneous termination of

services in the [other] case and the denial of services at the child's dispositional hearing." (*Cheryl P. v. Superior Court* (2006) 139 Cal.App.4th 87, 98.) We need not decide whether to follow *Cheryl P.* under the present circumstances. Although mother rhetorically asks if she could have been expected to make a reasonable effort in the two months between when her services were terminated in the half siblings' cases and when services were bypassed here, she does not actually argue that we should consider her efforts over a longer period. And even if we did so, it would not benefit her: it is undisputed that aside from visitation, she did not comply with any aspect of her case plan in the half siblings' cases. Therefore, we will focus on the reasonableness of mother's efforts during the two-month period before services were bypassed in this case.

" 'To be reasonable, the parent's efforts must be more than "lackadaisical or half-hearted," ' " and "*any* effort by a parent, even if clearly genuine," will not necessarily defeat the application of section 361.5(b)(10). (*R.T., supra,* 202 Cal.App.4th at p. 914, italics in original.) Appropriate factors to consider in judging the reasonableness of a parent's efforts include "the duration, extent[,] and context of [those] efforts, as well as any other factors relating to the quality and quantity of those efforts[.]" (*Ibid.*, italics omitted.) A parent is not required to " ' " 'cure' " ' " the problems that led to a sibling's or half sibling's removal, but "a parent's progress, or lack of progress, both in the short and long term, may be considered to the extent it bears on the reasonableness of the effort made. [¶] Simply stated, although success alone is not the sole measure of reasonableness, the measure of success achieved is properly considered a factor in the juvenile court's determination of whether an effort qualifies as reasonable." (*Id.* at pp. 914-915, italics omitted.)

Mother claims that the addition of a caseworker to aid her with her mental-health issues distinguishes the present case from the half siblings' cases and constitutes a reasonable effort to address the problems leading to those children's removal. Although we appreciate mother's progress in working on her mental health, we cannot say that the psychiatric appointments and individual therapy she recently began attending compelled a finding that she made a reasonable effort to address this problem. As the juvenile court

observed, mother has a long history of serious mental-health problems, and against this backdrop there was substantial evidence that her participation in a few treatment sessions did not amount to a reasonable effort. (See *R.T., supra,* 202 Cal.App.4th at p. 914.)

Mother also suggests that the Bureau did not do enough to help her seek mental-health services in the half siblings' cases and that her failure to address the problem on her own therefore should not be held against her in this case. She relies on decisions recognizing that an agency has the responsibility to ensure that a parent's mental-health issues are identified and that appropriate services to address those issues are provided. (*Patricia W. v. Superior Court, supra*, 244 Cal.App.4th at pp. 420-422; *In re K.C.* (2012) 212 Cal.App.4th 323, 330-333.) These cases addressed whether adequate reunification services were provided, however, not whether services were required in the first place. In any event, the juvenile court found that reasonable services were provided in the half siblings' cases, and it is too late for mother to challenge that finding now. The adequacy of the mental-health services in the other cases therefore does not affect our determination that there was substantial evidence mother did not make a reasonable effort to address her mental-health issues.

Moreover, there was substantial evidence that mother did not make a reasonable effort to address her homelessness. Although the juvenile court did not explicitly address this issue in bypassing reunification services, the primary evidence before the court that mother was trying to find housing was (1) the disposition report's indication that mother had been "looking for housing prospects" but had put those attempts on hold to focus on her mental health and (2) the social worker's vague statement at the disposition hearing that mother had "tried a lot to find housing resources." The record lacks more specific evidence of the efforts mother made or any degree of success she may have had. Indeed, at the disposition hearing the social worker testified that she did not even know what mother's current living arrangement was. The evidence that mother did not make any focused effort to address her homelessness further supports the bypass of services.

Finally, mother makes two cursory arguments of which we can quickly dispose. She seems to suggest that the juvenile court erred by finding that reunification services

were not in K.P.'s best interest, but she does not identify any purported error in that ruling. Mother also contends that the court improperly reduced the frequency of her visitation. She did not object to this ruling below, however, and she has therefore forfeited the issue. (See *In re E.A.* (2012) 209 Cal.App.4th 787, 791 [challenge to curtailment of visitation forfeited by failure to offer specific objection at disposition hearing].)

III.
DISPOSITION

The petition for extraordinary writ relief is denied on the merits. (Cal. Rules of Court, rule 8.452(h)(1); see § 366.26, subd. (*l*).) The request for a stay of the selection-and-implementation hearing under section 366.26 scheduled for November 2, 2016, is denied as moot. This decision shall be final immediately in the interests of justice. (Cal. Rules of Court, rules 8.452(i), 8.490(b)(2)(A).)

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Humes, P.J.

We concur:

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Marguiles, J.

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Banke, J.